

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Frankston)
Exchange and the Tyler)
Exchange.)

96-159

DOCKET FILE COPY ORIGINAL

PETITION

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Frankston exchange and the Tyler exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way:

No. of Copies of this Petition
FILED 24

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

3. Exchanges involved: Frankston in the Dallas, TX LATA and Tyler in the Longview, TX LATA;
4. Name of carriers: Frankston of Sprint/United/Centel Telephone and Tyler of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Frankston exchange has 3,033 access lines, and the Tyler exchange has 76,784 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Frankston customers returning ballots who voted in favor of ELC to Tyler: 90.00. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. PRIMA FACIE SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or

access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Frankston exchange and the Tyler exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Marjorie M. Weisman

Robert M. Lynch

Durward D. Dupre

Mary W. Marks

Marjorie M. Weisman

Attorneys for

Southwestern Bell Telephone Company

One Bell Center, Room 3520

St. Louis, Missouri 63101

(314) 235-2507

AUGUST 29, 1997

DOCKET NO. 12335

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE TROUP	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
TYLER	§	

ORDER NO. 13

DOCKET NO. 12413

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE BLESSING	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
BAY CITY	§	

ORDER NO. 17

DOCKET NO. 12922

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE MORGAN	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
MERIDIAN	§	

ORDER NO. 13

DOCKET NO. 13226

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE TEAGUE	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
FAIRFIELD	§	

ORDER NO. 9

DOCKET NO. 13248

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE GRAND	§	
SALINE EXCHANGE TO THE EXCHANGE	§	STATE OF TEXAS
OF TYLER	§	

ORDER NO. 8

DOCKET NO. 12335
DOCKET NO. 12413
DOCKET NO. 12922
DOCKET NO. 13226
DOCKET NO. 13248
DOCKET NO. 13268
DOCKET NO. 13318
DOCKET NO. 13323

ORDER NO. 13
ORDER NO. 17
ORDER NO. 13
ORDER NO. 9
ORDER NO. 8
ORDER NO. 10
ORDER NO. 9
ORDER NO. 8

DOCKET NO. 13268

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE PETTUS	§	
EXCHANGE TO THE EXCHANGES OF	§	OF TEXAS
KENEDY AND KARNES/FALLS CITY	§	

ORDER NO. 10

DOCKET NO. 13318

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE	§	
FRANKSTON EXCHANGE TO THE	§	OF TEXAS
EXCHANGES OF TYLER	§	

ORDER NO. 9

DOCKET NO. 13323

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE SUNSET	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
BOWIE	§	

ORDER NO. 8

UNABATING AND DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION

On July 28, 1997, the Commission Staff recommended that, in light of the recent Federal Communications Commission (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), that these applications be unabated. A community of interest has previously been established in these cases and a waiver

DOCKET NO. 12335
DOCKET NO. 12413
DOCKET NO. 12922
DOCKET NO. 13226
DOCKET NO. 13248
DOCKET NO. 13268
DOCKET NO. 13318
DOCKET NO. 13323

ORDER NO. 13
ORDER NO. 17
ORDER NO. 13
ORDER NO. 9
ORDER NO. 8
ORDER NO. 10
ORDER NO. 9
ORDER NO. 8

request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*. Therefore, these applications are unabated.

Within thirty days of the effective date of this order, SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 31ST DAY OF JULY, 1997

120712 file

DOCKET NO. 13318

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
FRANKSTON EXCHANGE TO THE
TYLER AND JACKSONVILLE EXCHANGES**

**§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS
§**

**ORDER NO. 8
ORDER OF SEVERANCE**

PROJECT NO. 15473

**PETITION OF THE FRANKSTON
EXCHANGE FOR EXPANDED LOCAL
CALLING SERVICE TO THE
EXCHANGE OF JACKSONVILLE**

**§
§
§
§**

**ORDER NO. 1
ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE**

On February 10, 1994, a petition for expanded local calling service (ELCS) from the Frankston Exchange to the Jacksonville Exchange was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 12766. The Frankston Exchange is in the Dallas Local Access and Transport Area (LATA) and the Jacksonville Exchange is in the Longview LATA. Federal court orders previously prohibited Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on August 9, 1994, Order No. 1 docketed this petition so that the Commission could formally process the interLATA petition and issue an interim order to allow SWB and GTE to seek waivers from Judge Harold H. Greene.

On October 16, 1995, an interim order of the Commission was issued. The interim order found that a community of interest exists between the exchanges and directed GTE and SWB to seek a waiver from Judge Greene. Since the time that the Interim Order was issued the Federal Telecommunications Act of 1996 (the Act) has become law. The Act lifts the prohibition on the GTE Telephone Operating Companies from providing interLATA services that had been imposed by the GTE Consent Decree. GTE Southwest, Inc. (GTE-SW) and Contel of Texas, Inc. (Contel) may now provide interLATA services. However, the Act does not grant Southwestern Bell Telephone Company (SWB) the

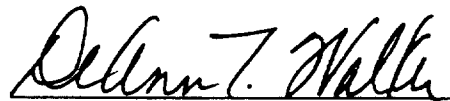
authority to provide interLATA services before first receiving a waiver from the Federal Communications Commission (FCC). The Act establishes criteria to be met by SWB in order for the FCC to grant a waiver to SWB.

The Frankston Exchange is served by United, and the Jacksonville Exchange is served by GTE-SW. With the enactment of the Act, GTE-SW can provide interLATA service. Therefore, the petition relating to the Jacksonville Exchange can and should continue to be processed through this project. The request for ELCS from the Frankston Exchange to the Jacksonville Exchange is severed from Docket No. 13318. It shall be processed as Project No. 15473 captioned *Petition of the Frankston Exchange for Expanded Local Calling Service to the Jacksonville Exchange*. The attached procedural schedule establishes the relevant deadlines for this project.

The Tyler Exchange is served by SWB, and is located in a separate LATA from the Frankston Exchange. SWB is still unable to provide interLATA service; therefore, the Tyler Exchange will not be severed from this proceeding.

SIGNED AT AUSTIN, TEXAS the 7th day of March, 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER

ADMINISTRATIVE LAW JUDGE

DOCKET NO. 13318

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE	§	
FRANKSTON EXCHANGE TO THE TYLER	§	OF TEXAS
AND JACKSONVILLE EXCHANGES	§	

INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on a evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order request non-optional "to and from calling" between the Frankston Exchange and the Tyler and Jacksonville Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from

providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exist between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon))(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers, and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On February 10, 1994, the Frankston Exchange filed a petition for ELCS between it and the Tyler and Jacksonville Exchanges, among others.

DOCKET NO. 13318

INTERIM ORDER

11. On August 3, 1995, Order No. 6 was issued in this proceeding. The order found that sufficient evidence was not presented to show a community of interest exists between the Frankston Exchange and the Tyler and Jacksonville Exchanges. On August 21, 1995, the petitioning coordinator filed an appeal of Order No. 6, and also supplemented the evidence supporting a finding that a community of interest exists between the exchanges. The appeal and additional information were treated as a motion for reconsideration. After a review of the additional evidence, Order No. 6 is withdrawn.

12. The Frankston Exchange is served by United Telephone Company of Texas, Inc. (United), and it is in the Dallas LATA. The Tyler Exchange is served by SWB, and the Jacksonville Exchange is served by GTE. The Tyler and Jacksonville Exchanges are in the Longview LATA.

13. The parties to the proceeding are the petitioning Frankston Exchange, GTE, SWB, United, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

14. The Frankston Exchange is contiguous with the Jacksonville Exchange, and is within 22 miles of the Tyler Exchange.

15. An affirmative vote of 90 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Frankston Exchange to the Tyler Exchange. An affirmative vote of 82 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Frankston Exchange to the Jacksonville Exchange.

16. The residents in the Frankston Exchange must obtain their state drivers' license from offices located in either the Tyler or Jacksonville Exchanges. The local Texas Employment Commission offices serving the Frankston Exchange are located in the Tyler and Jacksonville Exchanges. The State Comptroller's district office serving the Frankston Exchange is located in the Tyler Exchange. Portions of the Frankston Exchange are located in Cherokee County, and the county seat is Jacksonville. Thus, county government offices for those areas are within the Jacksonville Exchange. Lastly, the

Department of Public Transportation Maintenance office for the highways in the Frankston Exchange are located in the Jacksonville Exchange.

17. More than 50 percent of the workers in the Frankston Exchange are employed by businesses in either the Tyler or the Jacksonville Exchanges. Examples of businesses in the Tyler Exchange that employ residents of the Frankston Exchange are Kelly Springfield Tire Co., Tyler Pipe Co., Trane Co., East Medical Center Hospital, Mother Francis Hospital, Tyler public schools, state government offices, Sears, Wal-Mart, Foley's, and various other shopping centers. Examples of businesses in the Jacksonville Exchange that employ residents of the Frankston Exchange are Wal-Mart, the Nan Travis Memorial Hospital, Jacksonville public schools, First National Bank, the U.S. Post Office and other government offices, the Texas Department of Criminal Justice, several small manufacturing plants, and various other small businesses.

18. There are a limited number of commercial centers in the Frankston Exchange. More than 90 percent of the citizens in the Frankston Exchange rely upon stores located in the Tyler and Jacksonville Exchanges for such items as appliances, furniture, electronic equipment, clothing, and building and home improvement supplies. Shoppers from the Frankston Exchange regularly purchase goods in the Jacksonville Exchange from the Wal-Mart Super Center, Discount City, and other specialty clothing, appliance, and furniture stores. Shoppers also use stores in the Tyler Exchange, including the Broadway Square Mall, Sears, Dillard's, J.C. Penney's, Foley's Best Buy, Circuit City, Service Merchandise, Office Depot, McCoy's Building Supply Center, Lowe's, and other stores. The citizens in the Frankston Exchange rely upon radio stations, television stations, and newspapers from Tyler and Jacksonville. Frankston has a Chevrolet and Ford dealership, but all other brands of automobiles must be purchased in Tyler.

19. More than 90 percent of the citizens of the Frankston Exchange rely on physicians or medical facilities in either the Tyler or Jacksonville Exchanges. The East Texas Medical Center, the Mother Frances Hospital, and the University of Texas Health Center, which are all located in the Tyler Exchange, provide hospital services to the citizens of the Frankston Exchange. In addition, the ambulance service, including helicopter access, for the Frankston Exchange is located in the Tyler Exchange. Residents of the Frankston Exchange also rely upon physicians and the Nan Travis

Memorial Hospital in the Jacksonville Exchange. Residents of the Frankston Exchange also use chiropractors, optometrists, and dentists from the Tyler and Jacksonville Exchange.

20. A portion of the Frankston Exchange is located in the Jacksonville Independent School District.
21. Residents of the Frankston Exchange attend sporting events, cultural sites, and entertainment facilities in the Tyler and Jacksonville Exchanges. The facilities in the Tyler Exchange include the Caldwell Zoo, the Carnegie History Center, the Goodman Museum, the Hudnall Planetarium, the Tyler Museum of Art, the Tyler State Park, and the Tyler Municipal Rose Garden. The Jacksonville Exchange contains the Vanishing Texana Museum, Love's Lookout, and the Killough Monument.
22. There is a community of interest between the Frankston Exchange and the Tyler Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Tyler Exchange in the following ways: the affirmative vote of the subscribers returning ballots; commonality as a commercial and employment center; commonality of medical facilities and providers; and, commonality of government facilities.
23. There is a community of interest between the Frankston Exchange and the Jacksonville Exchange. The exchanges are contiguous to each other. In addition, the petitioners proved a community of interest with the Jacksonville Exchange in the following ways: the affirmative vote of the subscribers returning ballots; commonality as a commercial and employment center; commonality of medical facilities and providers; and, commonality of school districts.
24. No issues of law or fact are disputed by any party.
25. No hearing on the merits or Commission action is necessary and administrative review is warranted.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.
2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 14, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.

8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Frankston Exchange for expanded local calling service to the Tyler and Jacksonville Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) and Southwestern Bell Telephone Company (SWB) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.

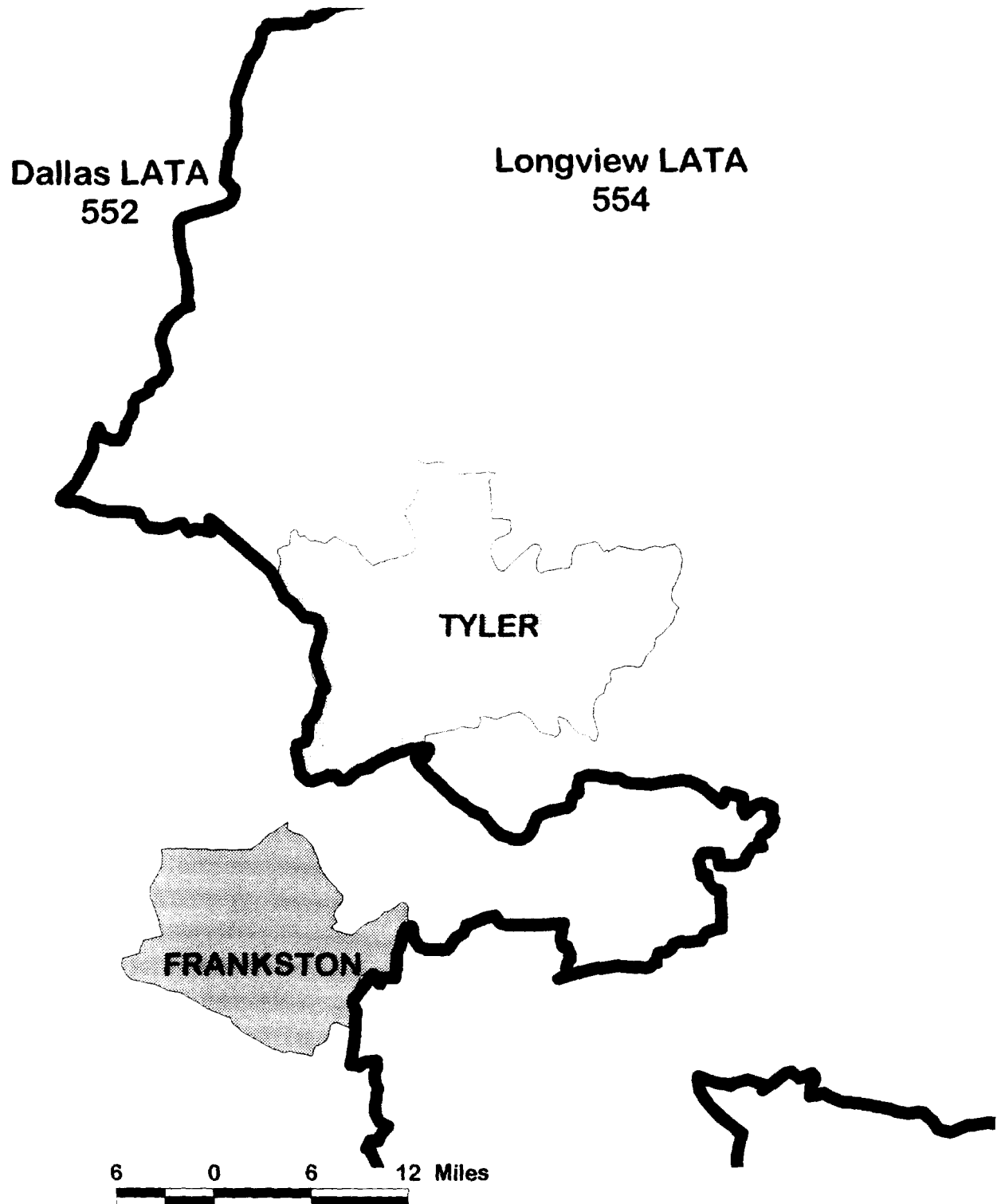
4. This Interim Order is effective November 6, 1995.

Respectfully submitted,

A handwritten signature in cursive script, reading "Deann T. Walker", is written over a horizontal line.

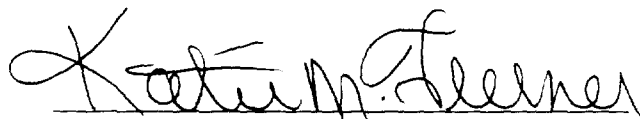
DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

Frankston To Tyler



CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701